



**Justice Centre**  
for Constitutional Freedoms

***Unconscionable and Unconstitutional***  
***Bill C-8's Attempt to Dictate Choices***  
***Concerning Sexuality and Gender***

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## Executive Summary

Condemning harmful practices that forcibly attempt to change someone's sexual orientation is laudable. What is not justifiable is using that reasonable concern as a cover for government imposition of overbroad and ideologically-based restrictions on the personal choices of Canadians concerning their own sexuality and gender.

Under the guise of prohibiting “conversion therapy,” the federal government's *Bill C-8, An Act to amend the Criminal Code (conversion therapy)* (“Bill C-8”) proposes to use the blunt instrument of the *Criminal Code* to take away personal choice and essentially impose gender transition as the only acceptable treatment for children experiencing gender identity distress. Bill C-8 creates new criminal offences that are not narrowly targeted to address the specific and demonstrated harms typically associated with “conversion therapy.”

Rather, through the use of an expansive definition of the term, Bill C-8 imposes an ideological view of sexuality and gender. It defines “conversion therapy” to include a wide range of medical, psychological and spiritual supports individuals may need or choose related to their sexuality or gender, effectively banning these supports with the threat of imprisonment.

The purpose of the *Canadian Charter of Rights and Freedoms* is to preserve the individual rights of each and every Canadian, and to preserve Canada as a free and democratic society. However, Bill C-8 violates the *Charter* rights and freedoms of health professionals, children and their parents, cultural and religious communities and LGBTQ Canadians.

Bill C-8 directly restricts the healthcare and other supports available to children experiencing gender distress, and the care that health professionals are able to provide to such children. It also directly infringes on the child-parent relationship, by threatening imprisonment for parents who seek cautious healthcare alternatives to the social, hormonal and physical gender transition of their children experiencing gender dysphoria or other psychological or neurological conditions.

Bill C-8 directly confronts the teaching of cultural and religious beliefs about sexuality and gender with the threat of imprisonment. It also severely restricts the ability of consenting adults to voluntarily receive the supports of their choice in relation to their sexuality and gender, by making it criminal to advertise or receive material benefit from “conversion therapy” as overbroadly defined.

Further, Bill C-8 discriminates against LGBTQ Canadians, by requiring counsellors and even religious groups to deny service on the basis of individuals' sexual orientation and gender identity.

Bill C-8 imposes broad criminal prohibitions that violate Canadians' human rights and constitutional freedoms, including the *Charter* rights to liberty and security of the person, freedom of expression, freedom of conscience and religion and equality.

Passing Bill C-8 would result in far-reaching impacts on the fundamental liberties of Canadians protected by the *Charter*. Bill C-8's substantial interference in the voluntary choices of individuals

concerning their own sexuality and gender is unlikely to be upheld by a court as justified in Canada's free and democratic society.

New criminal offences should be narrowly targeted to address specific and demonstrated harm. Instead, Bill C-8 is an overbroad, arbitrary and discriminatory violation of Canadians' human rights and constitutional freedoms. It is unconscionable and unconstitutional.

## **I. Bill C-8: An Act to Amend the Criminal Code (conversion therapy)**

Bill C-8 purports to create the following *Criminal Code* offences related to "conversion therapy":

- (a) causing a person to undergo conversion therapy against the person's will;
- (b) causing a child to undergo conversion therapy;
- (c) doing anything for the purpose of removing a child from Canada with the intention that the child undergo conversion therapy outside Canada;
- (d) advertising an offer to provide conversion therapy; and
- (e) receiving a financial or other material benefit from the provision of conversion therapy.<sup>1</sup>

All of these offences relate to and use the term "conversion therapy." The definition of "conversion therapy" is of paramount significance and drives the constitutional issues with Bill C-8.

### **A. An overly broad definition of "conversion therapy"**

The term "conversion therapy" naturally and rightfully repulses people. It evokes abusive and coercive practices that sought to eliminate same-sex attractions, including electro-convulsive therapy, aversion therapy, hormonal therapy (chemical castration), sex therapy, confinement and the infliction of bodily harm. For such practices, criminal punishment may be warranted.

The *Criminal Code* already prohibits the coercive and abusive practices commonly associated with conversion therapy. Assault (including the infliction of bodily harm), confinement, kidnapping and fraud are all existing *Criminal Code* offences.<sup>2</sup>

Bill C-8, however, does not specifically target these abusive and coercive practices that Canadians would associate with the term "conversion therapy". Instead, Bill C-8 proposes a remarkably expansive and encompassing definition of "conversion therapy" that will categorically prohibit a broad range of medical, psychological and spiritual supports that individuals currently and voluntarily choose to receive in relation to their sexuality, gender, sexual behaviour or addictions.

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<sup>1</sup> Bill C-8, *An Act to amend the Criminal Code (conversion therapy)*, First Session, Forty-third Parliament, 68-69 Elizabeth II, 2019-2020, Summary [*Bill C-8*].

<sup>2</sup> *Criminal Code*, RSC 1985, c C-46, ss 2, 266-268, 279, 380.

Bill C-8 defines conversion therapy as:

**Definition of *conversion therapy***

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a practice, treatment or service designed to change a person’s sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person’s gender transition; or
- (b) to a person’s exploration of their identity or to its development.

Several points are notable about this definition of “conversion therapy”:

1. It does not narrowly target coercive or abusive practices;
2. It conflates the separate and distinct concepts of sexual orientation and gender identity;
3. It discriminates on the basis of sexual orientation, by prohibiting change efforts toward heterosexuality, while allowing change efforts toward homosexuality;
4. It discriminates on the basis of gender identity, by prohibiting change efforts toward cisgender (natal gender identity) while expressly allowing gender transition away from one’s natal gender;
5. It discriminates by prohibiting any services to “reduce non-heterosexual ... sexual behaviour” while still allowing services to reduce heterosexual sexual behaviour; and
6. It imposes only one option for people dealing with gender identity issues, by effectively prohibiting the affirmation of natal gender identity and allowing only practices, treatments, and services for a “person’s gender transition”.

Each of these points raises constitutional concerns.

**B. Bill C-8 restricts children’s and adults’ access to care**

Bill C-8 will have a direct and substantial impact on both adults and children, restricting their access to receive care and support related to their sexuality and gender.

Bill C-8 expressly prohibits providing “conversion therapy” (as expansively defined) to children:

**Causing child to undergo conversion therapy**

**320.103 (1)** Everyone who knowingly causes a person who is under the age of 18 years to undergo conversion therapy is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) guilty of an offence punishable on summary conviction.

With no similar provision for adults, it may *appear* that consenting adults could still access the services of their choice related to their sexuality and gender. The *effect* of Bill C-8, however, will be to severely restrict the ability of adults to access the care and supports they wish to receive related to their sexuality or gender. This is because Bill C-8 also prohibits both advertising and receiving material benefit from “conversion therapy”:

#### **Advertising conversion therapy**

**320.104** Everyone who knowingly advertises an offer to provide conversion therapy is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) guilty of an offence punishable on summary conviction.

#### **Material benefit from conversion therapy**

**320.105** Everyone who receives a financial or other material benefit, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) guilty of an offence punishable on summary conviction.

It is disingenuous to claim that under Bill C-8 adults can still voluntarily choose to receive supports related to their sexuality and gender, when Bill C-8 threatens anyone “advertising” or receiving “a financial or other material benefit” from the provision of such services to adults with up to two years imprisonment.

Thus, individuals seeking therapy to address a sexual addiction that involves same-sex sexual behaviour would be prevented by the criminal prohibition on advertising from identifying someone willing to provide them with the specific kind of support they are seeking (though persons with sexual addictions involving opposite-sex sexual behaviour would not be so hindered). Further, threatening to imprison anyone who receives a “financial or other material benefit” from the provision of “conversion therapy” will effectively ensure that few, if any, counsellors, therapists, psychiatrists or psychologists will offer supports Bill C-8 deems “conversion therapy,” including helping individuals overcome sexual addictions (if those involve same-sex sexual behaviour).

Thus, it matters little that adults can technically consent to receive “conversion therapy,” since Bill C-8 will significantly limit the ability of consenting adults to identify and retain the counselling, therapy and support of their choosing related to their sexuality and gender.

### **C. Bill C-8 imposes an ideological view of sexuality and gender**

Canadians rightly expect their government to adopt laws based on evidence rather than ideology. This is particularly so regarding the *Criminal Code*, which sets out our society’s most basic requirements that all citizens must comply with on pain of criminal punishment.

Bill C-8, however, is expressly premised on a specific ideological view of sexuality and gender, which it then seeks to enforce with the threat of imprisonment.

Bill C-8’s Preamble states that it seeks to target “myths and stereotypes about sexual orientation and gender identity.” These “myths” and “stereotypes” are not specifically described or defined, with the exception that the Preamble references the “myth that a person’s sexual orientation and gender identity can and ought to be changed”.

In targeting this “myth,” it is apparent Bill C-8 is imposing the belief that people’s sexual orientation and gender identity cannot and should not be changed.

As to whether sexual orientation *can* change, scientific research indicates that changes in individuals’ sexual orientation do occur, with such changes being most frequent in young people.<sup>3</sup>

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<sup>3</sup> See Stewart et al, “Developmental patterns of sexual identity, romantic attraction, and sexual behavior among adolescents over three years” (2019) 77 *Journal of Adolescence*, 90-97, available at <https://www.science-direct.com/science/article/abs/pii/S0140197119301745?via%3Dihub>: “Results revealed 26% of girls and 11% of boys reported fluidity in identity and 31% of girls and 10% of boys reported fluidity in attractions. At each time point, up to 20% of girls and 6% of boys reported a sexual minority identity label with concurrent same-sex attraction; the majority of these participants also reported same-sex behavior. Among heterosexual-identified participants reporting some degree of same-sex attraction at year 3, approximately 66% of girls and 10% of boys reported same-sex behavior”; J Berona, SD Stepp, AE Hipwell, & KE Keenan, “Trajectories of Sexual Orientation from Adolescence to Young Adulthood: Results from a Community-Based Urban Sample of Girls” (July 2018) 63:1 *J Adolesc Health* 57–61, available at [10.1016/j.jadohealth.2018.01.015](https://doi.org/10.1016/j.jadohealth.2018.01.015): “Most (n = 658; 63.2%) participants reported at least one change in sexual orientation (mean [M] = 1.6 changes, SD = 1.5), which differed across classes,  $F(2, 1008) = 236.4, p < .001$ . The primarily same-sex class reported more frequent (M = 3.1, SD = 1.5) sexual orientation changes than the bisexual class (M = 2.7, SD = 1.2) and the primarily other-sex class (M = 1.0, SD = 1.1)”; L.M. Diamond, J.A. Dickenson, & K.L. Blair, “Stability of Sexual Attractions Across Different Timescales: The Roles of Bisexuality and Gender” (2017) 46 *Arch Sex Behav* 193–204 available at <https://doi.org/10.1007/s10508-016-0860-x>: “the majority of the non-heterosexual respondents had undergone multiple changes in sexual identity: 82 % of the lesbian/bisexual women and 78 % of the gay/bisexual men reported having switched their sexual identity label at least once after having first adopted a non-heterosexual identity, and 45 % of women and 34 % of men reported two or more identity changes”; S. L. Katz-Wise, “Sexual fluidity in young adult women and men: Associations with sexual orientation and sexual identity development” (2015) 6:2 *Psychology & Sexuality* 189–208, available at <https://doi.org/10.1080/19419899.2013.876445>: “Sexual fluidity in attractions was reported by 64% of women and 52% of men, with 49% of those women and 36% of those men reporting sexual fluidity in sexual identity based on experiencing changes in attractions, with no significant gender differences. Sexually fluid women used a range of sexual identities, whereas most sexually fluid men identified as completely homosexual/gay.”

Likewise, scientific research indicates that individuals, again particularly young people, *can* and *do* experience changes in their gender identity.<sup>4</sup>

The issue of whether sexual orientation or gender identity *ought* to change is not a question of myth or fact, but rather a subject of intensely personal reflection. Most significantly, when individuals experience or express a change in their sexual orientation or gender identity, it is a personal matter of the most intimate nature. The fact that some individuals do express (or seek) a change in their sexual orientation or gender identity, and that others do not, should not be ignored by a broad, ideological law that presumes to know what is best for individuals concerning this intensely personal matter.

Yet, in effect,<sup>5</sup> Bill C-8 prohibits treatments, therapies or services individuals may voluntarily choose to receive in relation to their sexuality and gender, if those services “change a person’s sexual orientation to heterosexual or gender identity to cisgender” or “reduce non-heterosexual attraction or sexual behaviour.”<sup>6</sup> Bill C-8 imposes its limiting ideological views on all Canadians and restricts their personal choices.

Consequently, Bill C-8 would criminalize a broad range of practices, treatments and services, including the following:

1. Paid counselling support, provided by a psychologist or other trained professional, to an individual seeking treatment for a sexual addiction (e.g. pornography, sexual promiscuity) if the addiction involves same-sex sexual behaviour;
2. Advertising by a faith-based support group that helps people to address sexual and gender identity issues in their own personal lives and which also embraces traditional beliefs about sexuality and gender;
3. Advertising by a secular 12-step program that helps people address sexual issues in their own personal lives;

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<sup>4</sup> See Devita Singh, “A follow-up study of boys with gender identity disorder” (Doctor of Philosophy, University of Toronto, 2012) [Unpublished doctoral dissertation] at pp 168-69 available at <https://images.nymag.com/images/2/daily/2016/01/SINGH-DISSERTATION.pdf>.: “The present study found that the majority of boys with GID [Gender Identity Disorder] showed desistence of their gender dysphoria when followed into adolescence and adulthood: 87.8% of the boys did not report any distress about their gender identity at follow-up and were happy living as males”; Kelley D Drummond, Susan J Bradley, Michele Peterson-Badali, & Kenneth Zucker, “A Follow-Up Study of Girls With Gender Identity Disorder” (2008) 44:1 *Developmental Psychology* 34-45 available at: <https://doi.org/10.1037/0012-1649.44.1.34> at pp 34 & 39: “At the assessment in childhood, 60% of the girls met the Diagnostic and Statistical Manual of Mental Disorders criteria for GID, and 40% were subthreshold for the diagnosis. At follow-up, 3 participants (12%) were judged to have GID or gender dysphoria...22 participants (88%) reported no distress with their female gender identity at follow-up. None of the participants desired contrasex hormones or sex reassignment surgery to masculinize their bodies, nor did they express a desire to get rid of their female sex characteristics.”

<sup>5</sup> By prohibiting the advertising of “conversion therapy” and receipt of any material benefit from the provision of “conversion therapy”, Bill C-8 in practicality prohibits any practice, treatment or service captured under its expansive definition of “conversion therapy” unless it is both provided for free and not advertised.

<sup>6</sup> *Bill C-8*, proposed *Criminal Code* section 320.101.



4. Medical treatments and psychological therapy (unless provided by unpaid health professionals) for individuals seeking to detransition to their natal gender, and for individuals who choose to address their gender dysphoria by seeking to accept their natal gender;
5. Counselling offered to help a child below the age of consent stop engaging in same-sex sexual activity; and
6. Any therapy designed to help a child with gender dysphoria regain comfort with her or his natal gender.

## **II. Bill C-8 Restricts Health Professionals' Ability to Treat Children's Gender Distress without Transition and Medicalization**

In the context of scientific and medical debates, which are far from settled, the expansive definition of “conversion therapy” in Bill C-8 relies on and imposes one, and only one, ethical and medical assumption about what is in the best interests of children experiencing distress concerning their gender identity. Bill C-8 assumes that transitioning to a gender different than one’s natal gender or exploring one’s gender identity different than one’s natal gender is the best option for all children and adolescents. There are no exceptions to this in Bill C-8. It imposes a blanket treatment option for all children and adolescents.

### **A. Bill C-8's imposition of a single treatment path for children**

Bill C-8's prohibition on therapies to change an individual's gender identity, other than to pursue “gender transition”, essentially imposes a one-way, one-size-fits-all treatment option for helping children and adolescents who are experiencing gender dysphoria or who have other social, neurological or psychological reasons leading them to question their gender identity.

While Bill C-8 would permit services related to the “exploration” of one’s “identity or its development,” the risk of being criminally charged and imprisoned for up to five years if a therapy or counseling is deemed to have the purpose of “changing” a person's gender identity (when gender identity may be in flux) will likely scare many practitioners into not offering treatment for gender identity issues at all, regardless of what may be in the best interests of a particular child. By doing so, Bill C-8 will pressure practitioners to funnel children on a medicalized path to puberty blockers, cross-sex hormones and extreme surgical interventions, without canvassing any other less-invasive options or causes for the alleged desire to transition. The potential long-term health effects of such medical measures on children and youth, including sterility, is largely unstudied.<sup>7</sup>

Bill C-8 imposes only one path forward for all children who are questioning their gender identity, removing the ability to help each child in a manner tailored to each child's best interests. Bill C-8 allows only one practice, service or treatment option: for the child to transition away from his or

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<sup>7</sup> See BMJ EBM Spotlight, “Gender affirming hormone in children and adolescents”, February 25, 2019, available at <https://blogs.bmj.com/bmjebmspotlight/2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/>.

her natal gender, or at least explore this transition. This ties the hands of parents, doctors, psychologists, counsellors and other medical professionals. More seriously than this, it provides little to no options for a child. There is no consideration given to the specific circumstances and needs of each child.

Furthermore, in light of the growing number of “detransitioners” (individuals who transitioned as adolescents to the opposite gender, have come to regret their decision, and are seeking to return to their natal gender),<sup>8</sup> this legislation may effectively result in a ban on counselling or assisting detransitioners to return to their natal gender (to become “cisgender”, which Bill C-8 prohibits).

Just because a child or adolescent initially seeks medical intervention to change her or his gender identity, does not mean that this will be permanent request. For instance, a 2019 peer reviewed article published in *Clinical Child Psychology and Psychiatry*, described the experience of some adolescents with gender dysphoria who wanted medical intervention, but “[o]ver the course of the psychosocial assessment, they came to understand their distress and its alleviation (at that particular point in time) differently and eventually chose not take a medical (hormonal) pathway and/or identified their gender identity as broadly aligned with their biological sex.”<sup>9</sup> Yet, Bill C-8 does not allow for this flexibility in changing treatment options.

Additionally, there is uncertainty in the medical field about the increasing and disproportionate number of natal females being referred with gender dysphoria. For example, in the United Kingdom, the Gender Identity Development Service went from having 399 natal females referred in 2014-2015 to 1740 natal females referred in 2018-2019; this is compared to 250 natal males referred in 2014-2015 and 624 natal males referred in 2018-2019.<sup>10</sup> This change is not just in the United Kingdom and “the reasons are not fully explicable”.<sup>11</sup> Full consideration of these facts, along with specific determinations of the circumstances and best interests of each child, is necessary, not Bill C-8’s political imposition of ideological blinders to such realities.

Recent research has found evidence that social contagion<sup>12</sup> may play a part in what has been described as “rapid onset gender dysphoria.” This is when adolescents (again primarily females)

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<sup>8</sup> From trans to detransitioner – what can we learn from this growing trend?, available at: <https://genderreport.ca/detransitioners-what-can-we-learn/>.

<sup>9</sup> Anna Churcher Clarke & Anastassis Spiliadis, “Taking the lid off the box’: The value of extended clinical assessment for adolescents presenting with gender identity difficulties” (2019) 4(2) *Clinical Child Psychology and Psychiatry* 338–352 at p 349, available at: <https://journals.sagepub.com/doi/pdf/10.1177/1359104518825288>.

<sup>10</sup> Gender Identity Development Service, United Kingdom, Sex assigned at birth 2014-15 to 2018-19, available at: <https://gids.nhs.uk/number-referrals>.

<sup>11</sup> Gary Butler, Nastasja De Graaf, Bernadette Wren, & Polly Carmichael, “Assessment and support of children and adolescents with gender dysphoria” (July 2018) 103:7 *Arch Dis Child* 631-636 at p 631 available at: <https://adc.bmj.com/content/archdischild/103/7/631.full.pdf>.

<sup>12</sup> Lisa Littman “Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria” (2018) at p 4, available at *PLoS ONE* 13(8): e0202330. <https://doi.org/10.1371/journal.pone.0202330> [Littman Study]: “In developmental psychology research, impacts of peers and other social influences on an individual’s development are sometimes described using the terms peer contagion and social contagion, respectively. The use of “contagion” in this context is distinct from the term’s use in the study of infectious disease, and furthermore its use as an established academic concept throughout this article is not meant in any way to characterize the developmental process, outcome, or behavior as a disease or disease-like state, or to convey any value judgement. Social contagion is the spread of affect or behaviors through a population. Peer contagion, in particular, is the process where an individual and peer mutually influence each other in a way that promotes

seek to transition to males, despite often no prior history of atypical gender identity. More research is needed to understand the causes and best approaches to addressing children's and adolescents' gender distress.<sup>13</sup>

## **B. Violation of practitioners' and patients' freedom of thought, opinion, belief and expression**

Section 2(b) of Canada's *Charter* expressly protects the freedom of thought, opinion, belief and expression. These protections guarantee the thinking, opinions, beliefs and expressions of health professionals from unjustified state interference. Further, section 2(b) protects the rights of listeners as well as speakers.<sup>14</sup> Thus, the patients and clients of health professionals have the right to receive the thoughts, opinions, beliefs and expressions of health professionals without state interference. Any violation of these rights must be "demonstrably justified".<sup>15</sup>

Bill C-8, however, violates the *Charter* freedoms to speak and listen, of both health professionals and their patients and clients. Under Bill C-8, health professionals:

1. Must not offer an opinion to "change a person's sexual orientation to heterosexual";
2. Must not offer an opinion to "change a person's . . . gender identity to cisgender"; and
3. Must not offer an opinion to "reduce non-heterosexual attraction or sexual behaviour".

To pass justification of a *Charter* violation, each of these restrictions on the conversations health professionals have with their patients and clients must be independently justified by a "pressing and substantial" state interest that is proportionately balanced with minimal impairment of the section 2(b) *Charter* freedoms of health professionals and their patients or clients.<sup>16</sup> Such categorical prohibitions are unlikely to be shown to cause "minimal impairment" to the rights of health professionals and their clients.

## **C. Political interference with medical and scientific debate limits healthcare options**

The most beneficial and appropriate treatments, therapies and services for addressing gender dysphoria are a subject of ongoing and continued medical and scientific debate. Some will point to studies that have found high desistance rates in youth who experienced gender dysphoria, meaning the vast majority, roughly 80% of youth, regained or acquired comfort with their natal

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emotions and behaviors that can potentially have negative effects on their development. Peer contagion has been associated with depressive symptoms, disordered eating, aggression, bullying, and drug use. Internalizing symptoms such as depression can be spread via the mechanisms of co-rumination, which entails the repetitive discussion of problems, excessive reassurance seeking (ERS), and negative feedback." [Internal citations omitted]

<sup>13</sup> Littman Study, pp. 38-40.

<sup>14</sup> See *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at paras 85-86, 1989 CanLII 20 (SCC); *Canadian Broadcasting Corp v Canada (Attorney General)* 2011 SCC 2 at paras 29-31.

<sup>15</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 91(24), s 1 [Charter]*.

<sup>16</sup> See *R v Oakes*, [1986] 1 SCR 103 at paras 69-71, 1986 CanLII 46 (SCC).

gender by the time they reach adulthood.<sup>17</sup> Others will argue the acknowledged fact that socially transitioning children significantly increases the persistence rates of a continued transgender identity.<sup>18</sup> Among researchers and clinicians, as well as activists, there is continuing, even heated, debate.<sup>19</sup>

It is wrong to assume that there is a medical consensus on this issue, and no government should seek to impose one, thereby ending vitally necessary debate and undermining efforts at objective research. What Bill C-8 seeks to expressly permit (gender transition of children), the United Kingdom is currently seeking to prohibit.<sup>20</sup>

In a free and democratic society, medical and scientific debates should not be settled by political dictates and the coercive force of law. Rather, uncensored scientific inquiry and debate, and also continued medical research are critical to medical and scientific progress, particularly in the developing, though controversial,<sup>21</sup> field of treating children with gender dysphoria.

Legal and political interference should not censor medical debate and scientific inquiry, which is what Bill C-8 does on a practical level, by criminalizing medical and therapeutic approaches which some deem “wrong”. Even more, government should not interfere with the personal choices of Canadians, and the ability of regulated health professionals to establish and assess the best course of treatment and what is in the best interests of a specific child.

When a government limits options for individuals experiencing personal and complex issues, and embeds ideological assumptions within legislation, this limits Canadians’ freedoms in an unconstitutional manner.

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<sup>17</sup> Kelley D Drummond, Susan J Bradley, Michele Peterson-Badali, & Kenneth Zucker, “A Follow-Up Study of Girls With Gender Identity Disorder” (2008) 44:1 *Developmental Psychology* 34-45 available at: <https://doi.org/10.1037/0012-1649.44.1.34>; Devita Singh, “A follow-up study of boys with gender identity disorder” (Doctor of Philosophy, University of Toronto, 2012) [Unpublished doctoral dissertation] available at <https://images.nymag.com/images/2/daily/2016/01/SINGH-DISSERTATION.pdf>; Thomas D. Steensma, Jenifer K. McGuire, Baudewijntje P. C. Kreukels, Anneke J. Beekman, & Peggy T. Cohen-Kettenis, “Factors associated with desistance and persistence of childhood gender dysphoria: A quantitative follow-up study” (2013) 52(6) *Journal of the American Academy of Child and Adolescent Psychiatry* 582–590 available at: <https://doi.org/10.1016/j.jaac.2013.03.016>; Jiska Ristori & Thomas D. Steensma, “Gender dysphoria in childhood” (2016) 28:1 *International Review of Psychiatry*, 13-20 available at: <https://doi.org/10.3109/09540261.2015.1115754>.

<sup>18</sup> See e.g. Julia Temple Newhook et. al “A critical commentary on follow-up studies and “desistance” theories about transgender and gender non-conforming children” (2018) *International Journal of Transgenderism* 19(2) available at: <https://doi.org/10.1080/15532739.2018.1456390>

<sup>19</sup> See Kenneth J. Zucker, “The myth of persistence: Response to “A critical commentary on follow-up studies and ‘desistance’ theories about transgender and gender nonconforming children” by Temple Newhook et al. (2018), 19:2 *International Journal of Transgenderism* 231-245 available at <https://doi.org/10.1080/15532739.2018.1468293>

<sup>20</sup> See *Daily Mail* article, “Under-18s will be blocked from having gender reassignment surgery in proposals to be published this summer” April 22, 2020 available at <https://www.dailymail.co.uk/news/article-8247599/Under-18s-blocked-having-gender-reassignment-surgery.html>: “Under-18s will be banned from having gender reassignment surgery, equalities minister Liz Truss said yesterday. While children are developing their decision-making capabilities, they should not be able to make irreversible choices, she said.”

<sup>21</sup> See e.g. *The Chronicle of Higher Education* article, “Journal Issues Revised Version of Controversial Paper That Questioned Why Some Teens Identify as Transgender” March 19, 2019 available at <https://www.chronicle.com/article/Journal-Issues-Revised-Version/245928>

Political interference in medical and scientific advancement, whether by ill-crafted legislation or activists, is destructive to having options available and allowing the medical and scientific community to complete much-needed research. A recent Canadian example is when in 2015 Dr. Kenneth Zucker, a world-renowned expert in the treatment of gender dysphoria, was accused of practicing “conversion therapy” and fired from his position as head of the Family Gender Identity Clinic of the Centre for Addiction and Mental Health (CAMH) in Toronto.<sup>22</sup> Dr. Zucker had held his position for more than 30 years before being fired. Over 500 clinicians and researchers signed a petition in Dr. Zucker's defence.<sup>23</sup> He was eventually vindicated,<sup>24</sup> but this incident resulted in the permanent closure of the gender identity clinic he led, which had provided treatment to many gender dysphoric children and youth and had produced leading research in the field.

Speaking to the availability of treatment options for gender dysphoric children and youth and the impact of politicizing the issue, Dr. Zucker's assessment following his experience deserves consideration:

In Dr. Zucker's view, it sparked a fear that the field of gender dysphoria – where he says there remains many urgent and unanswered clinical and theoretical questions – has been “poisoned by politics.”

“I think that conflation with politics has made it very difficult for many people in the field to say what they really think,” he said. “And I think that's really sad, that in a field where there are so many important issues to discuss and work on, that really bright people feel intimidated.”<sup>25</sup>

Bill C-8 further politicizes the treating of children and adolescents with gender dysphoria by its overbroad definition of “conversation therapy” and its ideological imposition of a one-size-fits-all treatment option for children and youth.

Bill C-8's attempt to criminalize a broad range of treatments, therapies and services as “conversion therapy” could cause a serious chilling effect throughout the health professions, resulting in a further lack of access to care for issues related to individuals' sexuality or gender. Children experiencing gender dysphoria will be particularly victimized, as Bill C-8 would see politicians who lack relevant qualifications and expertise usurp determinations rightly left to science, experienced medical experts and caring parents.

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<sup>22</sup> See *Globe and Mail* article, “Doctor fired from gender identity clinic says he feels ‘vindicated’ after CAMH apology, settlement” October 7, 2018 available at: <https://www.theglobeandmail.com/canada/toronto/article-doctor-fired-from-gender-identity-clinic-says-he-feels-vindicated/> [*Globe* article].

<sup>23</sup> See *Globe* article.

<sup>24</sup> *CBC News* article, “CAMH reaches settlement with former head of gender identity clinic” October 7, 2018 available at: <https://www.cbc.ca/news/canada/toronto/camh-settlement-former-head-gender-identity-clinic-1.4854015>

<sup>25</sup> See *Globe* article.

### III. Bill C-8's Violation of the *Charter* Rights of Children and Parents

Children have a *Charter* right to the care and protection of their own parents.<sup>26</sup>

Likewise, parents have the responsibility and corresponding *Charter* right to care for and make fundamental decisions for their young children. In this regard, Justice LaForest stated in *B(R) v Children's Aid Society of Metropolitan Toronto*:

... the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent.<sup>27</sup>

According to the Supreme Court of Canada, the vital link between parent and child may only be interfered with on a case-by-case basis when “necessity” is demonstrated, and there is a sufficient justification for doing so.<sup>28</sup> Necessity must be demonstrated; it cannot merely be alluded to or theorized.

Bill C-8 directly jeopardizes the child-parent relationship by threatening parents with up to five years in jail if they are deemed to have caused their own children to go through “conversion therapy.” If “conversion therapy” was defined in the manner that most Canadians understand the term—abusive practices, even torture, in order to rid a person of same-sex attractions—the violation of the child-parent relationship would have grounds for justification.

However, due to Bill C-8's broad definition of “conversion therapy,” its impact on the child-parent relationship will be much more pervasive and far-reaching.

For example, if a parent discovers their eight-year-old child is involved in same-sex sexual behaviour with a teenager, and if that parent intervenes and proceeds to get help for their child to stop engaging in this sexual behaviour, under Bill C-8, this could potentially be deemed a criminal offence of “[c]ausing [sic] child to undergo conversion therapy”,<sup>29</sup> which includes efforts to “reduce non-heterosexual . . . sexual behaviour.”<sup>30</sup>

Bill C-8 would criminalize the actions of caring and protective parents.

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<sup>26</sup> See *CPL, Re*, 1988 CanLII 5490 (NL SC), [1988] NJ No 137 (QL) at para 77: “The right that an infant child has, which is important to this case, is a right to be cared for by its parents. This is a right which I find is a right enshrined in the Charter under section 7. The right to security of the person. This is a right which a person is not to be deprived of except in accordance with principles of fundamental justice. The right of the state or the Crown to interfere with the right of security of the person can only be exercised if it is in accordance with the principles of fundamental justice.”

<sup>27</sup> *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] SCR 315 at 370, 1995 CanLII 115 (SCC).

<sup>28</sup> *Ibid* at para 371.

<sup>29</sup> *Bill C-8*, proposed *Criminal Code* s 320.103.

<sup>30</sup> *Bill C-8*, proposed *Criminal Code* s 320.101.

Consider another scenario that several parents have faced.<sup>31</sup> An autistic girl with learning disabilities informs her parents that she learned in school that she is actually a boy. Her parents proceed to spend time with their child, helping her to process what she is feeling. They encourage her, telling her that it is perfectly fine that she does not enjoy stereotypically “girly” things, and that she is still biologically a girl. The parents proceed to take their child to a counsellor, and eventually their daughter regains comfort in identifying as a girl. Under Bill C-8, these parents would be at risk of criminal prosecution and imprisonment for causing a child to undergo “conversion therapy,” which Bill C-8 defines to include “a practice treatment or services designed to change a person’s...gender identity to cisgender.”

#### IV. Bill C-8 Attacks Freedom of Conscience and the Core Tenets of Religious Faiths

Freedom of conscience and religion, in section 2(a) of the *Charter*, protects each and every Canadian, including atheists and agnostics, from government coercion in their beliefs and personal choices.

Bill C-8—rather than expressly prohibiting coercive and abusive practices—coercively limits Canadians’ personal choices contrary to their *Charter*-protected freedom:

Freedom can primarily be characterized by the absence of coercion or constraint. **If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint.** Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, **coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others.** Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices.<sup>32</sup>

Bill C-8 is effectively an attempt to impose one ideological view of sexuality and gender by means of the blunt instrument of the *Criminal Code*. In doing so, Bill C-8 directly attacks the central

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<sup>31</sup> See Affidavit of PT, sworn April 4, 2018, available at <https://www.jccf.ca/wp-content/uploads/2019/10/Filed-Affidavit-of-Parent-of-Autistic-Student-re-GSA-and-Transitioning.pdf>; Affidavit of AA, sworn January 18, 2019, available at <https://www.jccf.ca/wp-content/uploads/2019/05/Filed-Affidavit-of-Autistic-Student-re-GSA-and-Transitioning.pdf>; Affidavit of JP, sworn May 23, 2018, available at [https://www.jccf.ca/wp-content/uploads/2018/12/Filed-Affidavit-of-JP\\_Redacted.pdf](https://www.jccf.ca/wp-content/uploads/2018/12/Filed-Affidavit-of-JP_Redacted.pdf); Affidavit of DD, sworn July 15, 2019, available at <https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-parent-re-harm-of-GSA-to-autistic-child.pdf>; Affidavit of JJ, sworn June 26, 2019, available at <https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-autistic-student-re-fYrefly-school-presentation.pdf>; Affidavit of KK, sworn June 26, 2019, available at <https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-parent-re-harm-of-fYrefly-presentation-to-autistic-child.pdf>.

<sup>32</sup> *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 945 Dickson J (as he then was), 1985 CanLII 69 (SCC) [emphasis added] [*Big M Drug Mart*].

tenets of many religious communities, and therefore the very personal choices of their members, concerning sexuality and gender.

Many faith traditions believe that the only permissible expression of sexual intimacy is between a man and a woman who are married to each other. This belief is taught to young people within these religious communities, with the objective of encouraging young people to abstain from any and all sexual behaviour outside of that context, including “non-heterosexual . . . sexual behaviour.” Under Bill C-8, such teaching could be deemed “causing a child to undergo conversion therapy”, punishable by imprisonment for up to five years.<sup>33</sup>

Many people, religious and non-religious, also hold traditional beliefs about gender, including the view that humans are immutably either female or male. If they advocate against gender transition and encourage minors to find peace and wholeness by remaining in, or returning to, their natal gender identity, this too could be deemed “causing a child to undergo conversion therapy” and punished by up to five years in prison.

#### **A. Restriction of LGBTQ persons’ access to support consistent with their beliefs**

LGBTQ persons are not monolithic and should not be treated as if each individual has the same beliefs and make the same choices. For example, many individuals with same-sex attraction also choose to follow a religious path and abstain from same-sex behaviour.<sup>34</sup>

A law that prohibits advertising or receiving material benefit from any service to help “reduce non-heterosexual . . . sexual behaviour” may require a faith-based counselling service to discriminate against LGBTQ individuals who seek its service. Therefore, Bill C-8 infringes the freedoms of individual LGBTQ Canadians, because the Bill severely limits their ability to receive the support they want if they choose to reduce their sexual behaviour or choose to detransition.

All major religious faiths provide guidance as to the moral code by which individuals should lead their lives, including their sexual behaviour. If a faith community advertises a study or course that includes traditional teaching proscribing sexual activity outside of marriage, including “non-heterosexual . . . sexual behaviour,” this advertising would be subject to criminal prosecution for “advertising conversion therapy.” The consequence for LGBTQ individuals seeking to participate in such a study or course is that they would be deprived of their choice to participate, due to the prohibition on advertising it.

Further, even if a faith community does not advertise its moral teachings, Bill C-8 would require faith communities with traditional moral beliefs to discriminate against LGBTQ persons under 18

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<sup>33</sup> *Bill C-8*, proposed *Criminal Code* s 320.103.

<sup>34</sup> See public submissions to Calgary City Council opposing its broadly-worded proposed bylaw banning “conversion therapy”, available at <https://pub-calgary.escribemeetings.com/filestream.ashx?DocumentId=130291>, Letter 5a (pp 35-36), Letter 10a (pp 46-47), Letter 23a (p 89), Letter 27a (p 104), Letter 30a (pp 112-13), Letter 36a (pp 123-154), Letter 53a (pp 224-249), Letter 54a (pp 251-252).



years of age who personally seek to follow those moral beliefs, since supporting them in that goal would be “conversion therapy” under Bill C-8.

## **B. Preventing the teaching of traditional beliefs about gender and sexuality**

Criminalizing the actions of individuals who are sharing their views and beliefs about sexuality and gender is a clear and unacceptable violation of the *Charter* freedom of conscience and religion:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, **the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.**<sup>35</sup>

Freedom of conscience and religion necessarily includes the active promotion and teaching of one’s religious or non-religious beliefs, even when majoritarian or empowered opinions disagree. This freedom protects minority religious communities as well as cultural communities.

Freedom of conscience and religion likewise protects the ability of individuals, whether they are parents, grandparents, teachers or friends, to share their religious or non-religious beliefs about sexuality and gender.

The federal government makes the following disingenuous claim in its public messaging concerning Bill C-8:

These new offences would not apply to those who provide support to persons questioning their sexual orientation, sexual feelings or gender identity (such as teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members).<sup>36</sup>

But this is not what Bill C-8 says. Nothing in Bill C-8 exempts teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professional, friends or family members from the new “conversion therapy” crimes. Under Bill C-8, the only way for these individuals to avoid the risk of criminal prosecution and imprisonment would be to adopt Bill C-8’s ideological messaging concerning sexuality and gender. Should these individuals provide support to a minor that encourages the minor to either “change” her or his “gender identity to cisgender” or “reduce non-heterosexual... sexual behaviour,” those teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends and family members could face five years in jail for doing so. If Bill C-8 is passed into law, the government’s talking points would not protect these persons from criminal prosecution.

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<sup>35</sup> *Big M Drug Mart Ltd* at para 94, Dickson J (as he then was).

<sup>36</sup> Department of Justice Canada, “Federal Government introduces legislation to criminalize conversion therapy-related conduct in Canada” March 9, 2020 available at: <https://www.canada.ca/en/departement-justice/news/2020/03/federal-government-introduces-legislation-to-criminalize-conversion-therapy-related-conduct-in-canada.html>.

Bill C-8 shows a lack of respect for the diverse cultural and religious communities which form Canadian society. Bill C-8 is a severe violation of religious freedom, directly contrary to the principles enunciated by the Supreme Court of Canada in *Loyola High School v Quebec (Attorney General)*.<sup>37</sup> To tell the individual members of these communities how they can—or, under Bill C-8, how they cannot—explain their beliefs to young members of that same community “undermines the liberty of the members of its community” and has a “serious impact on religious freedom”.<sup>38</sup>

Bill C-8 would require cultural and religious communities and individuals to adopt an ideology they disagree with and speak to a minor about their beliefs concerning sexuality and gender “in terms defined by the state rather than by [their] own understanding of [their religious beliefs].”<sup>39</sup>

Further, Bill C-8 would “interfere[] with the right of parents to transmit [their faith] to their children”.<sup>40</sup> “[An] essential ingredient of the vitality of a religious community is the ability of its members to pass on their beliefs to their children[.]”<sup>41</sup> Further, as quoted by the Court in *Loyola*, the *International Covenant on Civil and Political Rights* requires state parties “to have respect for the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>42</sup>

Bill C-8 violates these foundational constitutional principles, and in so doing violates the rights of religious and cultural communities as well as those of parents and children.

## **V. Bill C-8 Violates the Liberty and Human Rights of LGBTQ Canadians**

Good laws and good policies, by definition, cannot be vague. Expansive criminal provisions that generally prohibit the personal choices of Canadians, without serious consideration as to whether those personal choices actually cause harm, cannot be “demonstrably justified in a free and democratic society” as required by section 1 of the *Charter*.

### **A. An overbroad and arbitrary interference with LGBTQ persons’ personal choices**

Section 7 of the *Charter* protects Canadians’ right to liberty. Canadians have a “right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference.”<sup>43</sup> The *Charter* protects our liberty when it comes to matters that are “fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.”<sup>44</sup>

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<sup>37</sup> 2015 SCC 12 [*Loyola*].

<sup>38</sup> *Loyola* at para 62.

<sup>39</sup> See *Loyola* at para 63.

<sup>40</sup> *Loyola* at para 64.

<sup>41</sup> *Ibid* at para 64.

<sup>42</sup> *Ibid* at para 65.

<sup>43</sup> *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66, 1997 CanLII 335 (SCC).

<sup>44</sup> *Ibid*.

Individuals' choices concerning their sexuality and gender are quintessentially and inherently private choices, going to the core of their individual dignity and independence. The *Charter* (and common sense) thus require that individuals' choices concerning their sexuality and gender should be "free from state interference."

The personal choices of Canadians related to their sexuality and gender cannot be neatly confined to government-defined boxes. Some Canadians, including LGBTQ Canadians, choose monogamy; other Canadians have multiple sexual partners. Some Canadians choose to limit their sexual behaviour for any number of reasons, ranging from religious convictions to relationship expectations.

Some Canadians that identify as transgender take active steps to transition away from their natal gender. Others actively seek to acquire peace and contentment with their natal gender. Still other Canadians choose to "detransition" back to their natal gender. Regardless of what each individual decides, the *Charter* empowers each person to decide for themselves.

Canadians have the freedom to make their own choices concerning their sexuality and gender.

The liberty of individuals can only be infringed "in accordance with the principles of fundamental justice."<sup>45</sup> A government prohibition that is arbitrary, overbroad or disproportionate does not accord with the principles of fundamental justice,<sup>46</sup> and will be struck down by a court as an unjustifiable violation of a *Charter* right. This holds true even if a government measure has an arbitrary, overbroad or disproportionate effect on just one person.<sup>47</sup>

Bill C-8 is an *overbroad* infringement of Canadians' liberty. It goes much farther than banning coercive and harmful practices that are justly condemned. Rather, under its expansive definition of "conversion therapy," Bill C-8 prohibits advertising, or receiving material benefit from, a broad range of medical, psychological and spiritual supports that individuals may choose to receive in relation to their sexuality and gender. In so doing, many Canadians will lose the freedom to be able to access the services of their choice.

Bill C-8 is also an *arbitrary* violation of Canadians' liberty. It allows medical support for individuals seeking to transition genders, but clearly and directly prohibits medical support for individuals seeking to detransition back to their natal gender identity. There is no rational basis for this prohibition, if the state is to respect the personal choices of Canadians.

Likewise, Bill C-8 places no restrictions on opposite-sex attracted individuals receiving relevant counselling advertisements and hiring the most suitable counsellor to help them address sexual issues or problems as they themselves deem best. In contrast, Bill C-8 restricts same-sex attracted individuals from accessing information about counsellors who have experience helping address same-sex sexual issues. Further, even if same-sex attracted individuals are able to locate a suitable counsellor with the relevant experience by word of mouth and not advertisement, they are prevented from hiring that counselor, since doing so could lead to imprisonment for the counsellor.

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<sup>45</sup> *Charter*, s 7.

<sup>46</sup> See *Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 96-97 [*Bedford*].

<sup>47</sup> *Bedford* at para 123.

These limitations on the ability of LGBTQ individuals to access services on the basis of their sexual orientation or gender identity are not only arbitrary, they are also discriminatory.

### **B. Restricting access to services on the basis of persons' sexual orientation and gender identity**

The *Canadian Human Rights Act* prohibits discriminating against people on the basis of their sexual orientation, religion, gender identity, gender expression and other grounds.<sup>48</sup> Similarly, section 15(1) of the *Charter* guarantees “equal protection and equal benefit of the law without discrimination” based on individuals’ personal characteristics. Restricting personal life choices about one’s sexuality and gender based on these factors is discrimination.

A law that allows opposite-sex attracted Canadians to receive advertisements, and pay for, supports to reduce unwanted sexual addictions or behaviours, but bars same-sex attracted Canadians from doing the same, is indisputable discrimination on the basis of sexual orientation. Similarly, allowing medical, psychological and other therapeutic interventions to help individuals transition away from their natal gender, while prohibiting such help for individuals seeking to de-transition, is likewise discriminatory.

In essence, discrimination in Bill C-8 comes in two different avenues. It discriminates against individuals being informed of and paying for available services and supports. It also requires all service providers, including religious organizations, to discriminate against individuals on the basis of their sexual orientation and gender identity. Personal choice is effectively eliminated for LGBTQ Canadians.

Bill C-8 displays its discriminatory nature by expressly preventing supports to “reduce non-heterosexual . . . sexual behaviour,” or to change a person’s “gender identity to cisgender.” Consequently, any paid addictions counsellor will necessarily have to discriminate against gay Canadians to ensure that the counsellor is not providing support to “reduce non-heterosexual . . . sexual behaviour,” which would result in imprisonment. Bill C-8 removes professional discretion from doctors, psychologists and other professionals to help individuals achieve their own goals and meet their own needs. Instead, Bill C-8 expressly mandates that an individual cannot choose to seek paid help to reduce non-heterosexual behaviour. Further, if an individual asks an employed psychologist for help to de-transition to a cisgender identity, Bill C-8 would force the psychologist to turn that individual away.

A law that forces service providers to choose between violating individuals’ human rights or face imprisonment deserves to be rejected.

The *Charter* prohibits government from imposing this quandary on service providers. The *Charter* likewise prohibits governments from delegating this prohibited discrimination to others, such as those providing psychological and other medical support. The government cannot escape *Charter* scrutiny by delegating to others.

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<sup>48</sup> See *Canadian Human Rights Act*, RSC 1985, c H-6, ss 3(1), 5.

Should the government pass Bill C-8, it can expect LGBTQ Canadians to file human rights complaints against it, for causing illegal discrimination against them. Further, in the event Bill C-8 is criminally enforced, it will likely be overturned by a court as an unjustified and discriminatory violation of section 15(1) of the *Charter*.

## **VI. Conclusion**

Bill C-8 is proposed ostensibly to prohibit “conversion therapy,” but it fails to target coercive and harmful practices. Using an expansive definition of “conversion therapy”, it imposes broad criminal prohibitions that violate Canadians’ human rights and constitutional freedoms, including the *Charter* rights to liberty and security of the person under section 7, freedom of expression under section 2(b), freedom of conscience and religion under section 2(a), and the right to equality under section 15(1).

Bill C-8 will foreclose or, at least stifle, much-needed medical and scientific exploration of treatments in the best interests of children with gender dysphoria. Bill C-8 will also directly interfere with the ability of families and communities with traditional beliefs about gender and sexuality to teach those beliefs to their children.

Bill C-8 restricts the personal choices of adults to receive counselling and support related to their sexuality and gender, since it prohibits advertising and receiving material benefit from overbroadly defined “conversion therapy.”

These restrictions, arbitrarily imposed on the basis of sexual orientation and gender identity, will particularly discriminate against LGBTQ persons, removing their ability to access the supports of their own choosing.

Bill C-8’s ideological and discriminatory restrictions placed on the ability to access services related to gender and sexuality is an affront to the basic principles of the *Charter*.

New criminal offences should be narrowly targeted to addressing specific and demonstrated harm. Far from being narrowly tailored, Bill C-8 is an overbroad, arbitrary and discriminatory violation of Canadians’ human rights and constitutional freedoms.